J-189 (Jail) C J.P.R.-/9-94

CA 1562/97 (2)

J-189 C

APPEAL OF PRISONER

No Convict No. 204/55 Name NOHAR SAI

Father's name JALVAA

Residence At- Pakhrikhar, P/s- Lakhanpur Age 28 yrs.
Distt- Ambikapur (M.P.)

Sentenced to Life Imprisonment on 30-6-97

Under Section 302 I.P.C. by IInd ADJ. Bilaspur (Shri Mahar Yaar Khan)

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the Prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1 Date of Application for copy of Judgement —

2 Date on which copy received 30-6-97

3 Date on which Appeal sent 06/07/97 11/07/97

4 Whether the prisoner wishes to be represented or not Yes

No Case Nbr 551/96 Name NOHARSAI S/o JALVAA

Confined in District Jail Bilaspur (M.P.)

No Octogen/ Dated 06/07/ 11/07/1997

Forwarded to the Registrar, High Court, M.P. Jabalpur (M.P.)

to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

Superintendent 11/7

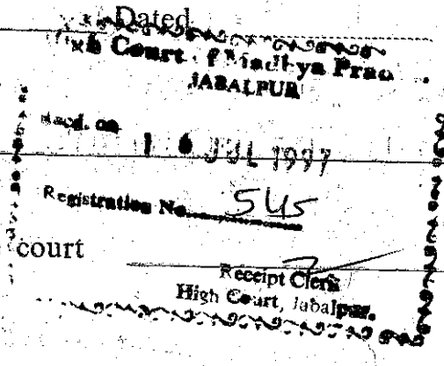
Jail

Date of receipt in Office

Date of receipt of record to accompany the Memo of Appeal to the Appellate court

No Dated 199

Forwarded to the



Date of receipt in Appellate court

(P. T. O.)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(21)

आदेश पत्रक

मामला क्रमांक C.A. No. 1562 सन् 97

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH : HON'BLE SHRI L.C.BHADOO, J
& HON'BLE SHRI DHIRENDRA MISHRA, J

CRIMINAL APPEAL NO. 1562 OF 1997

Appellant : **Nohar Sai**

Vs.

Respondent : **State of Madhya Pradesh**

Shri Shrawan Kumar Chandel, learned counsel for the appellant.

Shri U.N.S.Deo, learned Additional Public Prosecutor with Shri Ravindra Agrawal, P.L. for the respondent/State.

ORAL JUDGMENT
(04.04.2006)

Per L.C. Bhadoo, J

By this appeal under Section 374(2) of the Code of Criminal Procedure through Superintendent, District Jail, Bilaspur, the accused/appellant has questioned the legality and correctness of the judgment of conviction and order of sentence dated 30.06.97 passed by Second Additional Sessions Judge, Bilaspur in S.T. No. 331/96 whereby the learned Second Additional Sessions Judge after holding the accused/appellant guilty for the commission of offence under Section 302 of the Indian Penal Code sentenced him to undergo imprisonment for life and pay a fine of Rs.100/-, in default of payment of fine to further undergo S.I. for one month. However, the trial Court acquitted the accused/appellant for the offence under Section 376 of the IPC.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

मामला क्रमांक Cr.A.No. 1562/97 सन् 2000

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
2.	Case of the prosecution, necessary for the disposal of this appeal is that P.W.-1 Kashiram lodged a report Ex. P-1 in the police station Katghora on 2nd March 96 to the effect that Budhram along with his wife had gone to Ambikapur (Surguja) to attend some marriage leaving behind his daughter Rati Bai aged about 12-13 years and his brother Nohar Sai. A day before thereto i.e. on 01.03.96, in the morning, Guruvari Bai neighbour of Budhram went to attend the call of nature and she peeped into the house of Budhram by opening the half opened door and saw that Rati Bai was lying on the ground, she immediately rushed to her house and informed her husband Rati Ram on which Rati Ram called the people of the vicinity whereupon he along with Sidar Singh, Bihari Das - Up-Sarpanch and other villagers went to the house of Budhram and after opening the house saw the body of Rati Bai lying on the ground covered with a white cloth. After removing the cloth, he saw that the blood was present on the mouth, nose and injuries were present on the neck. On receiving this report, the S.H.O. of police station Katghora registered Crime No. 52/96 under Section 302 of the IPC, left for the scene of occurrence. After giving notice Ex.P-3 to the panchas prepared panchnama of the body of Rati Bai. He took into possession blood stained soil, plain soil, cot stained with blood, one *katri*, one wrist watch and one yellow colour blouse (used) from the place of occurrence under Ex. P-4. The knife was taken into possession under Ex.P-5 from the place of occurrence. Body of Rati Bai was sent for post mortem examination under Ex.P-9 to Community Health Centre, Katghora where Dr. H.D.Dehire P.W.-8 conducted the post mortem and	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक G.A.No.1562/97 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	prepared the post mortem report Ex.P-16. Site plan of the place of occurrence was prepared under Ex.P-10 by the Investigating Officer. The knife was sent for examination under Ex.P-11 and the doctor gave his opinion under Ex.P-19. After completion of the investigation, charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Katghora for the commission of the offence under Sections 376 and 302 of the IPC who in turn committed the case to the Sessions Judge, Bilaspur from where the learned Additional Sessions Judge received the case on transfer for trial.	
	3. The prosecution in order to establish the crime against the accused/appellant examined eight witnesses. Statement of the accused was also recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him. In most of the replies to the questions, he pleaded ignorance and stated that he is innocent and has been falsely implicated in the crime.	
	4. Learned Additional Sessions Judge, after hearing the arguments of the respective counsel convicted and sentenced the accused/appellant as mentioned in paragraph one of this judgment.	
	5. We have heard Shri S.K.Chandel, learned counsel on behalf of the accused/appellant and Shri U.N.S.Deo with Shri Ravindra Agrawal on behalf of the State.	
	6. Homicidal death of Rati Bai is not in dispute.	

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आदेश पत्रक

मामला क्रमांक Cr.A.No.1562/97 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
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7. As far as the involvement of the accused/appellant in commission of the crime in question is concerned, there is no direct and ocular evidence in this case and the whole case rests on the circumstantial evidence i.e.

i) on the fateful day, accused/appellant was seen in the house where deceased Rati Bai was residing along with her parents;

ii) the wrist watch of the accused/appellant was found at the place of occurrence;

iii) the accused/appellant absconded from the house after commission of the crime and he was arrested only one month after the incident.

8. In order to rest the conviction based on the circumstantial evidence it is the duty of the Court to ascertain whether based on the following principle, the prosecution has been able to connect the accused/appellant with the crime:

1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

3) the circumstances, taken cumulatively, should form a chain so complete that there is no

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.No. 1526/97 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

4) the circumstantial evidence in order to sustain the conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

9. Learned counsel for the accused/appellant argued that as far as the recovery of the wrist watch is concerned, since the accused/appellant was residing in the house and therefore if the watch of the accused/appellant was found in the house, based on this circumstance the accused cannot be connected with the murder of his own dear and near niece. He also argued that accused was already residing with the deceased therefore last seen theory does not apply in this case and P.W.-1 Kashiram was the person who committed the crime in question.

10. On the other hand Shri Ravindra Agrawal, counsel on behalf of the State supported the judgment of the trial Court.

11. After hearing the counsel for the parties we have scrutinized the evidence available on record:

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

मामला क्रमांक Cr. A. No. 1562/97 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -C-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

a) As far as the first circumstance (on the fateful day, accused/appellant was seen in the house where deceased Ratai Bai was residing along with her parents) is concerned, P.W.-5 Budhram who is the father of deceased Ratai Bai and brother of accused/appellant Nohar Sai, in whose house the accused/appellant was residing since last five-six months has stated that he along with his wife went to Surguja (Ambikapur) leaving behind his daughter Ratai Bai and accused Nohar Sai. After ten days of leaving the house, Badlu and Chandrabhan came to his village and informed that after committing rape on Ratai Bai, the accused/appellant Nohar has murdered her and ran away. On receiving this information, he came back to his house.

b) P.W.-1 Kashiram who is a neighbourer of Budhram has stated that 5-6 days back, from the date of incident, the mother and father of Ratai Bai went to attend a marriage leaving behind their daughter Ratai Bai and Nohar Sai. Ratai Bai was aged 14 years and accused/appellant Nohar Sai is the real brother of Budhram. At about 10.00 a.m. when he was at his residence, he came to know about the murder of Ratai Bai and also came to know that accused/appellant Nohar Sai had ran away after committing the murder. Thereafter he went to Kotwar Shanichar Das, informed him and also called the people of

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आदेश पत्रक

मामला क्रमांक C.A.C.No. 1562 सन् 2007

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

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the vicinity namely Bodhan Singh, Deosingh, Bechoo Ram, Bheer Singh and Bihari Das and went to the house of Budhram. The door was opened from where the dead body of Ratai Bai was visible which was lying on the ground in a pool of blood and was covered with a very thin cloth. There were no other clothes on the body. Thereafter the matter was reported in the police station under Ex.P-1.

c) P.W.-2 Guruwari Bai, wife of Rati Ram has stated that on the fateful day she woke up in the morning and saw that in spite of the rising of sun, the ox of Budhram was still standing in the house. At this, Guruwari Bai was wondering as to whether some body is there in the house or not and went towards the house of Budhram and saw that the door of the house was half opened. She peeped into the house and saw that dead body of Ratai Bai was lying on the ground. There were no clothes on her body. The body was covered with a *chaddar*. She thought that something wrong had been committed with Ratai Bai therefore, she immediately informed her husband Rati Ram. She has further stated that Budhram had gone 4-5 days prior to that to attend a marriage at Surguja (Ambikapur). Only accused/appellant Nohar Sai and Ratai Bai (since deceased) were in the house. The accused was the real uncle of the deceased. The day when she saw the dead

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक C.A.No. 1562/17 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -8-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

body of deceased, a day before thereto, in the evening, she saw accused and deceased Ratai Bai in the house. She informed her husband about the incident and thereafter they came to the house of Budhram and after removing the *chaddar* they saw that there was some white fluid like thing present on the private parts of deceased Ratai Bai which raised the doubt that something wrong has been committed on Ratai Bai. There was injury on the temporal region and blood was oozing out of the injury. The bangles of Ratai Bai were broken and one wrist watch of accused Nohar Sai was lying near the body, which was being put on by accused Nohar Sai on his hand. She has also stated that she did not saw the accused after the incident and after one month of the incident she saw the accused.

d) P.W.-3 Bechoo Ram has corroborated the above evidence and he has also stated that the wrist watch of the accused/appellant was lying on the spot in a broken condition and he saw the accused while putting the watch on his hand. The blood was oozing out of the ear of deceased Ratai Bai. Budhram and his children had already left 5-6 days back for attending a marriage. A day before thereto, at about 8.00 p.m. in the night, accused/appellant came for the purpose of grinding of wheat at his flour mill.

e) P.W.-4 Sidar Singh has also corroborated the above

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आदेश पत्रक

मामला क्रमांक C.A.No. 1562 सन् 2017

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
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evidence. He has stated that one knife was lying on the spot. The wrist watch of the accused/appellant was also lying on the spot and the Investigating Officer P.W.-7 M.C.Tiwari has stated that when he reached on the spot he took into possession the blood stained soil and plain soil from the place of occurrence and one steel wrist watch stained with blood and other articles. Therefore, from the above evidence, it is established that on the fateful day accused/appellant and the deceased were living in the house and from the evidence of P.W.-3 Bechoo Ram, it is established that a day before thereto, in the evening at about 8.00 p.m. accused/appellant came to his flour mill for the purpose of grinding wheat. P.W.-2 Guruwari Bai has also stated that the accused was in the house on the date of incident. P.W.-5 Budhram father of the deceased and brother of the accused/appellant has also stated that he left his brother Nohar Sai along with his daughter Ratai Bai at the residence therefore it is established that the accused and the deceased were the persons who were present in the house where the offence was committed.

f) As per the settled law by the Apex Court, that the accused can be connected, based on the last seen theory only when there is a close proximity with the commission of the crime and when the deceased was seen alive with the accused in

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आदेश पत्रक

मामला क्रमांक C.A. No. 1532/97 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

company of the accused and there should not be any possibility of coming any third person in between. Based on the above principle, if we examine the present case as has been mentioned earlier, the accused/appellant and the deceased were in the house in the night when the crime was committed. The defence has not been able to bring on record any circumstance that any third person in between came in the house. Moreover, the wrist watch of the accused/appellant in a broken condition was found in the place of occurrence.

g) As far as the second circumstance (the wrist watch of the accused/appellant was found at the place of occurrence) is concerned, from the evidence of above mentioned witnesses, it is established that the wrist watch of the accused in broken condition was lying at the place of occurrence and which was taken into possession by P.W.-7 M.C.Tiwari, the Investigating Officer and this fact has not been denied by the accused that the wrist watch does not belong to him. The witnesses have stated that they saw the accused/appellant while putting that watch on his hand. Therefore this circumstance that the wrist watch of the accused in broken condition was also found at the place of occurrence is also a strong circumstance showing the implication of the accused in the crime in question as the

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक C.A. No. 1562/97 सन् 2000

.....विरुद्ध.....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 11 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accused has not explained that how his wrist watch was found at the place of occurrence in broken condition.

h) As far as third circumstance (the accused/appellant absconded from the house after commission of the crime and he was arrested only one month after the incident) is concerned, admittedly, as it has been mentioned in the earlier part of this judgment that only the accused and the deceased was residing in the house and in the night of incident, the accused/appellant was seen in the house as per the prosecution witnesses and on the next day morning when the dead body of Ratai Bai was seen by P.W.-2 Guruwari Bai, the accused was not present in the house as he absconded. His wrist watch in broken condition was found at the scene of occurrence. Being the uncle of the deceased he ought to have explained his absence from the house and in what circumstance the offence was committed. Though the counsel for the accused/appellant has tried to shift the crime on P.W.-1 Kashiram and in the cross examination of Kashiram it has been asked that he is the person who committed the crime but the accused has not stated anything in his statement under Section 313 of the Cr.P.C. that when he left the house and where he remained for one month, If Kashiram had committed the crime, then he ought to have informed about the crime to

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

मामला क्रमांक C.A.No. 1528/17 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -12-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the people of the vicinity or to his brother. Therefore the conduct of the accused absconding just after the incident is relevant under Section 8 of the Evidence Act and which indicates the involvement of the accused in the crime in question.

12. Therefore it is established that the accused and the deceased were seen together when the deceased was alive in the house where the offence was committed. The broken wrist watch of the accused was found at the place of occurrence and lastly the accused/appellant absconded immediately after commission of the crime and remained absconded for one month without informing anybody about the crime till he was arrested establishes beyond reasonable doubt the involvement of the accused/appellant in commission of the crime and the chain of circumstance is complete. The only irresistible inference can be drawn from the established circumstance that accused was the author of crime in question.

13. Thus, we do not find any illegality or infirmity in the judgment of the trial Court convicting and sentencing the accused/appellant under Section 302 of the IPC for committing the murder of Ratai Bai.

14. In the result, the appeal being devoid of merits is liable to be dismissed and is hereby dismissed.

Sd/-
L.C. BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

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